IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
WRIT PETITION NO.1692 OF 2006

M/s.I.G.Petrochemcals Ltd. & anr. .. Petitioners
v/s.
The Union of India & ors. .. Respondents

Mr.Mohan Jayakar i/by Khaitan & Jayakar for petitioners.
Mr.A.M.Sethna for respondents.

CORAM : H.L. GOKHALE &
V.R. KINGAONKAR, JJ.

DATED : 2nd August 2006

P.C. :

1. Rule. Heard the learned Counsel for the parties.

2. The grievance of the petitioners is that when their Appeal was to be heard before the Commissioner of Central Excise (Appeals), they were not given the adequate opportunity. What had happened was that the Commissioner of Central Excise (Appeals), who is respondent No.2 herein, had fixed the hearing of the Appeal of the petitioners on 13th March 2006 at 11.30 a.m. The learned Advocate for the petitioners was in difficulty on that date and, therefore, he wrote to the officer concerned requesting him to keep the matter at 4.30 p.m. on that date itself. That letter was given to the concerned officer.

Yet he declined to adjourn the matter. By way of abundant caution, the petitioners placed their written explanation on record, which according to the petitioners, has not been considered while directing a pre-deposit of 50% of the duty demand.

3. Mr.Sethna, learned Counsel appearing for the respondents, states that the submissions in the written explanation have been considered and thereafter this order has been passed. We do not go into this aspect of the matter. The fact remains that the learned Advocate had sought time until 4.30 p.m. on the same day. If the Commissioner (Appeals) had other engagements, he could have kept the matter after a few days. The petitioners' Advocate had sought an opportunity of being heard and it was in the fitness of things that the officer concerned should have afforded it, particularly when the Advocate had given a written application pointing out that he had another matter in the High Court and could not be able to remain present at 11.30 a.m. on that date.

4. For this reason alone, we allow the Petition and set aside the impugned order dated 16th May 2006 and restore the petitioners' Appeal

and the Application for stay to the file of the 2nd respondent. We make it clear that we are not expressing our opinion one way or the other with respect to the observations made by the officer on merits. Respondent No.2 will decide the Appeal on its own merits. He may do so at the earliest since it appears that he does want to decide it early. There is no difficulty about it.

5. Rule is made absolute as above. However, there shall be no order as to costs.

(H.L. GOKHALE, J.)

(V.R. KINGAONKAR, J.)